IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 114 OF 2005
A/W CRIM.W.P.NOS.115/2005, 116/2005, 119/2005
120/2005, 121/2005

Ranjit T. Choudhary ...Petitioner.

V/s

Navkar Sugars & Ano.
& Anr. ...Respondents.

Mr. S.V. Marwadi with Sunita R. Sharma for the petitioner.

Mr. S.S. Kulkarni for respondent No.1

Mr. A.M. Shringarpure, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 5th May, 2005

P.C.:

1. Petitioner is challenging the order of issuance of process by the Judicial Magistrate, First Class, Court No.1 at Vashi, Navi Mumbai on a complaint filed by respondent No.1 under section 138 read with section 141 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the petitioner that when the alleged cheques were issued by the Company and were dishonoured by the Bank, during this period, the petitioner was not the Director of the Company. The learned Counsel submitted that the petitioner joined the Company on 10/6/2001. Initially, the Company was

called as Takemore Investments Pvt. Ltd. This name was subsequently changed to M/s Bombay Bazar Pvt. Ltd. on 10/7/2001. The learned Counsel submitted that the petitioner resigned from the Company on 10/9/2002. The cheques were returned unpaid on 11/9/2002. The demand notice was issued to the Company by the complainant on 21/9/2002. The learned Counsel, therefore, submitted that the petitioner was not the Director of the Company when the cheques were issued and were dishonoured. He invited my attention to Form 32 in which it was stated that the petitioner had resigned on 14/9/2002. The learned Counsel also relied on number of judgments of the Supreme Court. He relied on the judgment of the Supreme Court in the case of Sil Import, USA Vs. Exim Aides Silk Exporters, Bangalore reported in **(1999) 4 SCC 567**. He also relied on the judgment in the case of K.R. Indira vs. Dr. G. Adinarayana reported in **2004 CRI.L.J. 5**. He also relied on the judgement in the case of Saketh India Ltd. and others vs. India Securities Ltd. reported in **(1999) 3 SCC 1** and also in the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar reported in **(1998) 6 SCC 514** and also in the case of Dalmia Cement (Bharat) Ltd. Vs. Galaxy Traders & Agencies Ltd. and Others reported in **2001 SCC (Cri) 1163**.

3. The learned Counsel appearing on behalf of the Respondent No.1 has filed a detailed reply in which it is stated that the petitioner had actively participated in the transaction of purchasing sugar from the complainant. It is further stated that he had signed all the cheques which were issued by the Company. It is further submitted that the present petitioner was liable to be prosecuted under the provisions of section 138 read with section 141 of the Negotiable Instruments Act. In the reply, the alleged resolution of resignation and Form 32 are also disputed. It is submitted that in order to get out of the clutches of law, back-dated documents had been created.

4. Respondent No.1 - Complainant has filed chart of various cheques which were issued by the petitioner under his signature and the date of dishonour. From the said chart, it can be seen that the cheques were dishonoured on 7/9/1992 and the resignation of the petitioner was accepted on 10/9/2002 and the Registrar of Companies was informed on 11/10/2002.

5. In my view, since there is a serious dispute regarding resignation of the petitioner from the

Company and even otherwise since it is alleged that the cheques were signed by the petitioner and were dishonoured prior to his resignation, it would not be possible to interfere with the order of issuance of process. All questions raised in the petition therefore will have to be decided by the Trial Court only after the evidence is adduced by the parties. There cannot be any dispute regarding the ratio laid down in the judgements relied upon by the petitioner. However, the ratio of the said judgments will not be applicable to the facts of the present case.

6. Accordingly all the above Writ Petitions are rejected.

V.M. KANADE, J.